

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

EUGENIA G. VOGEL, HOWARD VOGEL
RETIREMENT PLAN and HOWARD VOGEL,
individually and in his capacity as trustee of the
Howard Vogel Retirement Plan,

Defendants.

Adv. Pro. No. 10-05090 (SMB)

STIPULATION AND ORDER FOR SUBSTITUTION OF DEFENDANT
EUGENIA G. VOGEL

WHEREAS, on December 2, 2010, Irving H. Picard, as trustee ("Trustee") for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III, and the substantively consolidated estate of Bernard L. Madoff individually, commenced the above-captioned adversary proceeding

(the “Adversary Proceeding”) against Eugenia G. Vogel (“Eugenia Vogel”), among others, in the United States Bankruptcy Court for the Southern District of New York;

WHEREAS, transfers from BLMIS to Eugenia Vogel (the “Transfers”), which are detailed in the Complaint for this Adversary Proceeding (the “Complaint”), are currently at issue;

WHEREAS, Eugenia Vogel died on September 11, 2012 during the pendency of this action;

WHEREAS, Eugenia Vogel maintained her residence in Florida prior to her death;

WHEREAS, under Section 733.101(1), Florida Statutes (2014), the venue for probate of wills shall be the county in Florida where the decedent was domiciled;

WHEREAS, as of the date hereof, the probate administration process has not been initiated for Eugenia Vogel in Florida or anywhere else;

WHEREAS, the Trustee filed the Adversary Proceeding against Eugenia Vogel prior to her death and would be affected by the outcome of the probate proceeding and is therefore an interested person who may petition for and initiate probate administration;

WHEREAS, substantially all of Eugenia Vogel’s assets are held by the Eugenia G. Vogel Trust and the Eugenia G. Vogel Irrevocable Trust (collectively, the “Trusts”);

WHEREAS, Emile Gladstone serves as the trustee and is the sole beneficiary of the Eugenia G. Vogel Trust; and

WHEREAS, Emile Gladstone serves as the trustee of the Eugenia G. Vogel Irrevocable Trust;

WHEREAS, Emile Gladstone’s unnamed issue are the sole beneficiaries of the Eugenia G. Vogel Irrevocable Trust;

IT IS HEREBY STIPULATED AND AGREED, by and between the Trustee, the Eugenia G. Vogel Trust, the Eugenia G. Vogel Irrevocable Trust, and Emile Gladstone, solely in his capacity as trustee of the Trusts, as follows:

1. The Trusts and Emile Gladstone, solely in his capacity as trustee of the Trusts (collectively referred to hereinafter as “Defendants”), are substituted into this action in place of Eugenia Vogel.

2. The Complaint shall be deemed so amended and the Clerk of the Court is hereby directed to amend the caption to remove Eugenia Vogel and substitute Defendants, as reflected in Exhibit A to this Stipulation and Order.

3. Undersigned counsel for Defendants: (i) expressly represents that she has the authority to accept service of the Complaint on behalf of Defendants; (ii) waives service of the summons and the Complaint on behalf of Defendants; (iii) hereby waives any defenses based on insufficiency of process or insufficiency of service of process of the summons and Complaint on behalf of Defendants; and (iv) expressly agrees that the amendments noted in Paragraphs 1 and 2 hereof shall not be considered an amendment under Federal Rule of Civil Procedure 15(a)(1)(A) or (B), that the Trustee’s right to amend under Federal Rule of Civil Procedure 15(a)(1)(A) or (B) is expressly reserved, and that the Trustee may file one amendment without leave of court in compliance with Federal Rule of Civil Procedure 15(a)(1)(A) or (B).

4. All parties recognize that the Trustee has the power to initiate the probate administration process for Eugenia Vogel in Florida and file a timely claim against the estate. Defendants have requested that the Trustee not initiate probate proceedings. Additionally, all parties recognize that the Trusts held substantially all of Eugenia Vogel’s assets at the time of her death and such Trusts may be liable for the claims of Eugenia Vogel’s creditors to the extent her

probate estate contained insufficient assets to satisfy the claims of all creditors. In addition, the Trustee may be able to assert subsequent transfer claims against the Trusts in the event he was successful in his claims against the estate of Eugenia Vogel. All parties also recognize that substituting Defendants will allow all parties to avoid the probate administration process for Eugenia Vogel.

5. In consideration of the above, including, without limitation, the decision by the Trustee to honor the request of Defendants not to initiate probate proceedings, Defendants agree that they waive any right to petition for the administration of a probate proceeding for Eugenia Vogel. In addition, the Trustee and Defendants agree that Defendants waive and are estopped from raising any potential rights, defenses, or arguments in this Adversary Proceeding, or any subsequent adversary proceeding involving the Transfers, arising from the probate administration process not being initiated for Eugenia Vogel, including but not limited to any potential rights, defenses, or arguments arising under Section 733.710(1), Florida Statutes (2014). Defendants further acknowledge that the Trustee is relying on Defendants' agreement to satisfy any claim ultimately assessed against Eugenia Vogel or her estate in exchange for not petitioning the Florida probate court to open Eugenia Vogel's estate. If Defendants raise any potential rights, defenses, or arguments in this Adversary Proceeding, or any subsequent adversary proceeding involving the Transfers, arising from the probate administration process not being initiated for Eugenia Vogel, in violation of this agreement, the Trustee shall have the right to damages arising from the violation, with damages being defined as the amount of \$874,946, which is the total amount of avoidable transfers that the Trustee alleges Eugenia Vogel received from BLMIS, plus any attorneys' fees incurred in enforcing this agreement.

6. All parties recognize that Emile Gladstone, as trustee of the Eugenia G. Vogel

Irrevocable Trust, may represent and bind the beneficiaries of the Eugenia G. Vogel Irrevocable Trust under Section 736.0303(3), Florida Statutes (2014). All parties agree that all parts of this stipulation that are entered into by Defendants shall also be binding on all beneficiaries of the Eugenia G. Vogel Irrevocable Family Trust, including any future beneficiaries who are not yet born.

7. Except as set forth herein, the parties to this Stipulation and Order reserve all rights and defenses they may have.

8. This Stipulation and Order may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation and Order shall be deemed an original.

Dated: New York, New York
September 9, 2014

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Attorneys for Defendants

SO ORDERED:

Dated: September 10th, 2014
New York, New York

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE